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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/753,513

01/03/2001

Michael Mesh

S0489/7010 GSE

3166

23338

7590

11/16/2005

DENNISON, SCHULTZ, DOUGHERTY & MACDONALD
1727 KING STREET
SUITE 105
ALEXANDRIA, VA 22314

EXAMINER

WONG, BLANCHE

ART UNIT

PAPER NUMBER

2667

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/753,513

Applicant(s)

MESH ET AL.

Examiner

Blanche Wong

Art Unit

2667

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☒ Claim(s) 4-19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. The 35 U.S.C. 112, first paragraph, rejection has been withdrawn.
2. Examiner acknowledges that co-pending application 09/753,399 claims a method, whereas the present application claims a system. However, due to similar scope and functions, the potential of obviousness-type double patenting raises ground for nonstatutory double patenting.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, a multiplexer/demultiplexer of a packet transmission module (cl. 2) and a multiplexer/demultiplexer of a service aggregation module (cl. 3) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-3** are rejected under 35 U.S.C. 103(a) as being unpatentable over Mo et al. (U.S. Pat No. 6,693,909).

With regard to cl. 1, Mo discloses (Fig. 6)

at least one service collection unit (receiver 120, demultiplexer 122 and transmitter 126) including

a collection module 120 (receiver, col. 8, ln. 25-27) for collecting a plurality of services data (traffic is distinguished, segregated, and processed based on a two level, low/high priority scheme ... segmented into any number of suitable traffic types based on CoS, QoS and other traffic type identifiers, col. 8, ln. 12-24) to be transmitted;

a processing module 122 (demultiplexer, col. 8, ln. 27-29) for processing the services data in their original protocols into packets (two packet or other suitable sized buffer, col. 8, ln. 32); and

a packet transmission module 126 (transmitter) for converting the packets into optical signals on an optical fiber for transmission (the transmitter 126 includes an optical to electrical interface OEI 164 for converting an egress traffic stream to optical signals for transmission over the high-speed optical links 32, col. 8, ln. 29-31); and

an aggregator (traffic buffer 150, local buffer 152 and multiplexer 124, col. 8, ln. 20) including

a sorting module 150,152 (traffic and local buffers) for sorting the services data (high/low priority traffic) from a plurality of packets according to service type (high/low); and

a service aggregation module 124 (multiplexer, col. 9, ln. 8-28) for combining like services data (the multiplexer inserts all high-priority pass-through

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traffic from the transmit buffer 150 into an egress traffic flow 194, col. 9, ln. 8-9)
from transmission over an appropriate service network.

However, Mo fails to explicitly show a metro network.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to include a metro network within transport network 10 of Fig. 1. The suggestion/motivation for doing so would have been to enlarge current network. Therefore, it would have been obvious to combine a metro network with Mo for the benefit of a bigger transport network, to obtain the invention as specified in cl. 1.

With regard to cl. 2 and 3, Stephen further discloses multiplexer/demultiplexer 122,124 (demultiplexer, col. 8, ln. 27-29; multiplexer, col. 9, ln. 8-28)

Allowable Subject Matter

6. Claims 4-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11

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F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claim 1 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/753399. Although the conflicting claims are not identical, they are not patentably distinct from each other.

09/753399 discloses a method for data transmission over an optical network that performs the functions of a service collection unit and an aggregator, namely "collecting, in at least one service collection unit, ... processing ... into packets, converting packets into optical signals ... sorting ... in at least one aggregator module, ...".

The current application shows similarly.

09/753513 discloses a system for data transmission over an optical network with "at least one service collection unit including a collection module for collecting ... a processing module for processing ... into packets; and a packet transmission module for converting the packets into optical signals ...; and an aggregator ... including: a sorting module for sorting ...".

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to observe the similarities between 09/753399 and 09/753513. The suggestion/motivation for doing so would have been to provide for implementation of a

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method. Therefore, it would have been obvious to have a system claim for the benefit of implementation.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blanche Wong whose telephone number is 571-272-3177. The examiner can normally be reached on Monday through Friday, 830am to 530pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi H. Pham can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Bw

BW

October 27, 2005


CHI PHAM
SUPERVISORY PATENT EXAMINER
ELECTRONIC BUSINESS CENTER
10/27/05